

EXHIBIT 1

EXCERPT OF THE NEIL ZOLTOWSKI DEPOSITION TRANSCRIPT TAKEN ON JUNE 14, 2019

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MINNESOTA

3
4 FAIR ISAAC CORPORATION,

5 Plaintiff,

6 v. Court File No. 16-cv-1054 (WMW/DTS)

7 FEDERAL INSURANCE COMPANY,
8 an Indiana corporation, and ACE
AMERICAN INSURANCE COMPANY,
9 a Pennsylvania corporation,

10 Defendants.

11 VIDEO DEPOSITION

12 The following is the video deposition of
13 NEIL J. ZOLTOWSKI, taken before Jean F. Soule,
14 Notary Public, Registered Professional Reporter,
15 pursuant to Notice of Taking Deposition, at the law
16 office of Fredrikson & Byron, P.A., 200 South Sixth
17 Street, Suite 4000, Mille Lacs Conference Room,
18 Minneapolis, Minnesota, commencing at 8:09 a.m.,
19 Friday, June 14, 2019.

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22
23 C O N F I D E N T I A L

24 ATTORNEYS' EYES ONLY
25

<p>1 relationship with that customer because of the</p> <p>2 professional service fees that go along with a</p> <p>3 license of that type, but that wasn't the situation,</p> <p>4 based upon the failure of the parties to come to an</p> <p>5 agreement in early 2016.</p> <p>6 Q. So in paragraph 58 of your reply, you</p> <p>7 reference Schedule 12.1 of Mr. Bakewell's report,</p> <p>8 if you could put both those -- if you could put</p> <p>9 schedule --</p> <p>10 A. I think this may have been citing to</p> <p>11 the wrong exhibit. I think it's supposed to be</p> <p>12 12.0. So this might be just an error in my report.</p> <p>13 Q. So when you say in paragraph 58 of</p> <p>14 your reply, you say at the very end, quote, Based</p> <p>15 on the list of licenses in Exhibit 12.1 of the</p> <p>16 Bakewell Report, dozens of well-known companies</p> <p>17 have licensed Blaze Advisor under these terms since</p> <p>18 2003 when FICO adopted this methodology, and you're</p> <p>19 saying that was a mistake and you meant to refer to</p> <p>20 exhibit -- Schedule 12 of the Bakewell report?</p> <p>21 A. Yes, because if you look at 12.1,</p> <p>22 there's only seven agreements in that exhibit, and</p> <p>23 there are 88 in Exhibit 12.0. So I apologize,</p> <p>24 that's just an error.</p> <p>25 Q. So do any of the licenses listed in</p> <p style="text-align: right;">Page 179</p>	<p>1 1200 license agreements, have you come across any</p> <p>2 license agreement approaching a fee as high as the</p> <p>3 one FICO is now claiming?</p> <p>4 A. I don't recall and I don't believe so,</p> <p>5 but I don't think there were any that had</p> <p>6 circumstances such as this, with a party that had a</p> <p>7 license agreement terminated and then continued to</p> <p>8 use it without the appropriate authorization and</p> <p>9 rights.</p> <p>10 Q. You'd agree with me that FICO's</p> <p>11 license agreement for Blaze Advisor are real-world</p> <p>12 licensing evidence in this matter, right?</p> <p>13 A. If you mean by real-world licensing</p> <p>14 evidence that they are agreements entered into by</p> <p>15 FICO for -- or granting rights to its Blaze Advisor</p> <p>16 software, if that's the definition, then, yes.</p> <p>17 Q. Did you factor any of FICO's Blaze</p> <p>18 Advisor licenses with other customers into your</p> <p>19 analysis?</p> <p>20 A. I believe I answered this question</p> <p>21 earlier, but I considered them, but based upon the</p> <p>22 facts and circumstances between these two parties,</p> <p>23 I did not find a similar -- similarly situated</p> <p>24 issue where you have a party that renegotiated a</p> <p>25 license or was attempting to, failed to renegotiate</p> <p style="text-align: right;">Page 181</p>
<p>1 Exhibit 12 to the Bakewell report have a license</p> <p>2 fee as high as the one that FICO is now claiming?</p> <p>3 A. I don't recall.</p> <p>4 Q. So did you look through -- you've</p> <p>5 referenced the fact that you've looked through a</p> <p>6 number of the FICO agreements with customers</p> <p>7 relating to Blaze, right?</p> <p>8 A. Correct.</p> <p>9 Q. You haven't looked through all of the</p> <p>10 FICO agreements, FICO software license agreements</p> <p>11 involving Blaze that have been produced in</p> <p>12 discovery in this case, right?</p> <p>13 A. No. I believe there were something</p> <p>14 like 1200 of them.</p> <p>15 Q. You think there was 1200 of them?</p> <p>16 A. I thought that's --</p> <p>17 Q. Why are you looking at Counsel?</p> <p>18 A. Because I was going to get my</p> <p>19 recollection confirmed. I just don't recall the</p> <p>20 number.</p> <p>21 Q. Okay. I'd prefer you not do that.</p> <p>22 A. That's fine.</p> <p>23 Q. Yeah.</p> <p>24 A. It's just a production issue.</p> <p>25 Q. Yeah, all right. So, in any of those</p> <p style="text-align: right;">Page 180</p>	<p>1 and then continued to use the software without the</p> <p>2 appropriate authorization and rights.</p> <p>3 Q. Would you agree that the lost license</p> <p>4 fees analysis that you have utilized is not the</p> <p>5 same as the market rate for those licenses during</p> <p>6 that time period?</p> <p>7 A. It's based upon the way FICO prices</p> <p>8 its license, its named application licenses. I</p> <p>9 would have to go back through and understand what</p> <p>10 you mean by market rate in all those agreements.</p> <p>11 But, again, I would state there was not a similar</p> <p>12 situation where you had a company continuing to use</p> <p>13 the software after the termination of an agreement.</p> <p>14 Q. You state in paragraph 66 of your</p> <p>15 reply that, "There is no other objective measure of</p> <p>16 FICO's lost license fees than its list prices for</p> <p>17 each application that Defendants are accused</p> <p>18 wrongfully using," unquote.</p> <p>19 A. Yes, that's what it states in</p> <p>20 paragraph 66.</p> <p>21 Q. Why isn't the license fees based on a</p> <p>22 perpetual license a proper objective measure?</p> <p>23 A. I've already stated the answer to</p> <p>24 that, but I'll answer it again, which is, when FICO</p> <p>25 is negotiating a license from the perspective of</p> <p style="text-align: right;">Page 182</p>

1 entering into a perpetual license, [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 In this situation, you have two
8 adversarial parties [REDACTED]
9 [REDACTED]
10 [REDACTED] and it's simply a bridge that's allowing
11 Federal to continue using the software for as long
12 as it decides to keep the implementation of the
13 software and as it maybe contemplates moving to
14 another platform, which it's deciding to do as
15 stated in Mr. Bakewell's report.
16 Q. Now, is it your opinion that FICO's
17 history of licensing Blaze Advisor to different
18 customers has no bearing on the license fees that
19 it has lost?
20 A. Could you repeat that again? I'm
21 sorry.
22 Q. Is it your opinion that FICO's history
23 of licensing Blaze Advisor to different customers
24 has no bearing on the license fees it has lost?
25 Page 183

1 A. No, that's not my opinion.
2 Q. Could you turn to paragraph 67 of your
3 reply?
4 A. Okay.
5 Q. Could you read the first sentence in
6 paragraph 67 of your reply out loud?
7 A. "...FICO's history of licensing Blaze
8 Advisor to different customers has no bearing on
9 the fees it has lost as a result of Defendants'
10 wrongful and continued use." And I would state --
11 Q. No. That's -- that's my question.
12 A. That's fine.
13 Q. Now, right before reading that you
14 said that was not your opinion. Is it in fact your
15 opinion?
16 A. It's in fact my opinion as it relates
17 to pricing of this particular license. It's not my
18 opinion -- it's my opinion that the pricing doesn't
19 matter as it relates to this particular situation.
20 The history of its licensing and the fact that it
21 uses the pricing matrix and has for more than
22 15 years is important to this analysis, and I guess
23 that's what I'll state is really what I mean by
24 that.
25 Q. So -- so what -- what is it, are you
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1 saying that the -- FICO's history of licensing to
2 different customers does have a bearing on the
3 fees --
4 A. The pricing of --
5 Q. -- it has lost?
6 A. -- those licenses and those facts and
7 circumstances doesn't have any bearing on the fees
8 and the quantification of the fees, but its history
9 of using a pricing matrix and the facts and
10 circumstances of this case that lend itself to a
11 named application license is where I find that that
12 history of licensing would be important to the
13 analysis.
14 Q. Okay. And what I want to know is are
15 you stating that that is your opinion in the first
16 sentence on page 67 or is your opinion the
17 testimony you provided earlier, which is the
18 opposite?
19 A. I think my testimony and my opinion is
20 that that history of licensing, as I reviewed those
21 licenses, it doesn't have a bearing on the
22 quantification of the license fees that were lost
23 here. It is an important -- it was a consideration,
24 but it doesn't have a bearing on the actual result
25 of my analysis.
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1 Q. So it has no bearing on the fees,
2 you're saying?
3 A. Correct.
4 Q. Okay. Now, one of the valuation
5 approaches is the market approach, right?
6 A. Correct.
7 Q. And this approach uses transactions
8 comparable to the subject of the valuation, right?
9 A. That's correct.
10 Q. These transactions provide evidence of
11 value, right?
12 A. They can.
13 Q. And all the -- the choice of which
14 approaches and methodologies to utilize depends on
15 the specific facts and circumstances of the
16 valuation, a valuation professional must consider
17 all three approaches in his analysis, right?
18 A. Correct, when it comes to valuation.
19 Q. And you did not consider the 80 plus
20 Blaze Advisor agreements and amendments produced in
21 this case, right?
22 A. I think I just stated that I did
23 consider them. I didn't find them to have any
24 bearing on the actual fees or lost license fees
25 that I'm opining to in terms of my quantification
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